

## § 3400.20

## 24 CFR Ch. XX (4–1–12 Edition)

and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

### Subpart A—General

#### § 3400.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

#### § 3400.23 Definitions.

Terms that are defined in the SAFE Act and used in this part have the same meaning as in the SAFE Act, unless otherwise provided in this section.

*Administrative or clerical tasks* means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

*American Association of Residential Mortgage Regulators* is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at <http://www.aarmr.org>.

*Application* means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

*Clerical or support duties*:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

*Conference of State Bank Supervisors* (CSBS) is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at <http://www.csbs.org>.

*Employee*:

(1) Subject to paragraph (2) of this definition, means:

(i) An individual:

(A) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(B) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(2) Has such binding definition as may be issued by the Federal banking agencies in connection with their implementation of their responsibilities under the SAFE Act.

*Farm Credit Administration* means the independent Federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

*Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

*For compensation or gain*. See § 3400.103(c)(2)(ii).

*Independent contractor* means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with § 3400.103(a), or is not required to be licensed, in accordance with § 3400.103(e)(5), (e)(6), or (e)(7).

*Loan originator*. See § 3400.103.

*Loan processor or underwriter*, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs

clerical or support duties at the direction of and subject to the supervision and instruction of:

- (1) A state-licensed loan originator; or
- (2) A registered loan originator.

*Nationwide Mortgage Licensing System and Registry or NMLSR* means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators and the registration of registered loan originators or any system established by the Secretary of HUD, as provided in subpart D of this part.

*Nontraditional mortgage product* means any mortgage product other than a 30-year fixed-rate mortgage.

*Origination of a residential mortgage loan*, for purposes of the definition of *loan processor or underwriter*, means all residential mortgage loan-related activities from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

*Real estate brokerage activities* mean any activity that involves offering or providing real estate brokerage services to the public including—

- (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and
- (5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

*Residential mortgage loan* means any loan primarily for personal, family, or household use that is secured by a

mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

*Secretary* means the Secretary of Housing and Urban Development.

*State* means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

*Unique identifier* means a number or other identifier that:

- (1) Permanently identifies a loan originator;
- (2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (3) Shall not be used for purposes other than those set forth under the SAFE Act.

## Subpart B—Determination of State Compliance with the SAFE Act

### § 3400.101 Scope of this subpart.

This subpart describes the minimum standards of the SAFE Act that apply to a state's licensing and registering of loan originators. This subpart also provides the procedures that HUD follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, HUD will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

### § 3400.103 Individuals required to be licensed by states.

- (a) Except as provided in paragraph (e) of this section, in order to operate a SAFE-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with